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AT

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 686

Case No. 644: REBIZOV

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, Vice-President, presiding; Mr. Hubert Thierry; Mr. Francis Spain;

Whereas on 10 January 1992, Alexei Nikolayevitch Rebizov, a former staff member of the United Nations, filed an application requesting the Tribunal, inter alia, to:

"...

- Quash and nullify the decision rendered on 13 June 1990 by [the] Chief, Personnel Service (...);

- Quash and nullify the decision of 14 October 1991 (...);

- Quash and nullify any evaluation of my job performance made after November 1989;

...

- Order that I be reinstated, as from 15 June 1990, as a United Nations staff member with all effects deriving from the Staff Regulations;

...

- Order that I be reinstated immediately as a United Nations staff member;

...

- Order that my contract with the United Nations be extended until 14 January 1991, with all effects, including pecuniary ones, deriving from the Staff Regulations and my contract."

Whereas the Respondent filed his answer on 8 March 1994;

Whereas the Applicant filed written observations on 7 October 1994;

Whereas the Tribunal put questions to the Respondent on 14 October 1994, to which he provided answers, together with supporting documents, on 25 and 26 October 1994.

Whereas, on 2 and 3 November 1994, the Applicant requested the production of further documents and commented on the Respondent's submission;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 15 January 1989, as an Associate Translator in the Russian Translation Section in the Department of Conference Services of the United Nations Office at Geneva (UNOG), on a one year fixed-term appointment. His letter of appointment noted, under "Special Conditions," that he was "on secondment from the Government of the Union of Soviet Socialist Republics."

On 17 November 1989, the Chief of the Russian Translation Section completed a performance evaluation report (PER) for the Applicant from 15 January through 18 November 1989, giving him four "C"s (Good), six "B"s (Very Good) and one "A" (Excellent), and noting "[h]e is loyal to the United Nations." The PER was signed by the Chief of UNOG Languages Service on 21 November 1989, with an overall rating of a "good performance." On 22 January 1990, the PER was signed by the Applicant.

On 5 December 1989, the Chief of the Russian Translation Section recommended, to the Officer-in-Charge of UNOG Languages Service, a six-month extension of the Applicant's appointment, which was due to expire on 14 January 1990. On 22 December 1989, the

Chief of UNOG Languages Service recommended to the Chief of Personnel Service a one-year extension of the Applicant's appointment.

On 26 February 1990, the Applicant, along with two other USSR staff members, sent a letter to the Permanent Representative of the USSR to UNOG, charging that practices were still being followed which forced them to violate the UN Charter and their oath of office and listing some of them. They concluded by recording their "refusal to fulfil departmental directives incompatible with the standards and principles of the international civil service and the UN Charter."

In a cable dated 4 April 1990, an official at the Office of Human Resources Management (OHRM) at Headquarters communicated to UNOG its approval of the recommendation to extend the Applicant's appointment for one year, "subject to Government concurrence." On 18 April 1990, the Chief of the Russian Translation Section wrote to the Chief of the UNOG Languages Service, recalling that the Section had recommended a six-month extension of the Applicant's contract, which had nevertheless been extended for one year. He noted that the Applicant's performance "has not since shown any signs of changing for the better." In view of the "steadily inadequate quality of his work," he requested that the question of "terminating [the Applicant's] contract after the 6-month period initially proposed" be reconsidered.

In a reply dated 24 April 1990, the Chief of the UNOG Languages Service expressed regret that the Applicant's performance had not improved. She noted that Headquarters had approved a one year extension "subject to Government concurrence" which had not yet been received. She said the Applicant would be given a short-term contract "to cover the period until a reply is received from the Soviet authorities." She reaffirmed that the recommendation for a one year extension of the Applicant's contract was "to allow him the

normal training period of two years" and concluded that "the decision concerning the extension of his contract now rests with the Soviet authorities."

On 30 April 1990, OHRM at Headquarters cabled UNOG, in part, as follows:

> "... OHRM HAS RECEIVED GOVERNMENT CONCURRENCE TO EXTEND [THE APPLICANT'S] FIXED-TERM APPT [APPOINTMENT] ONLY THROUGH 14 JUNE 1990 REPEAT 14 JUNE 1990 SINCE THERE ARE SERIOUS GRIEVANCES AGAINST HIS PERFORMANCE. ..."

The Applicant was successively granted three fixed-term appointments, through 14 June 1990. The Personnel Action form effecting the first extension, through 15 March 1990, describes it as an "[e]xtension of fixed-term appointment for a period of one year through 14 January 1991." The section of the form headed "Remarks" notes that it was an "[i]nterim extension pending receipt of Government concurrence." The three letters of appointment each stated, as a special condition, that the Applicant was "on secondment from the Government of the USSR."

On 14 May 1990, the Applicant wrote a letter to the Permanent Representative of the USSR Mission to UNOG. Referring to his earlier letter of 26 February 1990, he noted that he and the other two staff members who wrote the letter had since "been under constant pressure and received various threats from the officials of the Soviet Mission," and that he personally, because of the pending extension of his appointment, had become "the main target of those retaliatory measures." He stated that, in a private conversation, in March 1990, the USSR Deputy Ambassador had proposed a four-year extension of his contract in exchange for withdrawal of the letter. As a result of his refusal, the Chief of the Russian Translation Section was attempting to discredit his performance "to provide a fallacious justification for the non-renewal of [his] contract."

On the same date, the Applicant sent a copy of his letter to the Assistant Secretary-General for OHRM and requested protection "in view of the seriousness of the threats." He also stated his concern that the Chief of the Russian Translation Section was "wilfully endeavouring to discredit my performance and conduct in order to provide a fallacious ex-post-facto justification for his attempts to curtail the normal renewal of my service."

On 29 May 1990, the Applicant wrote to UNOG's Chief of Personnel Service and requested an extension of his appointment. In a reply dated 1 June 1990, a Personnel Officer informed him, "approval for the extension of your contract was given until 14 June 1990 and we do not have, therefore, the authority to extend your appointment".

In mid-May 1990, the Applicant requested the Panel on Discrimination and Other Grievances (the Panel on Discrimination) to investigate his case. On 1 June 1990, a memorandum was sent from the Panel on Discrimination to UNOG's Chief of Personnel Services, requesting that the Applicant's contract be extended for two months, so that the Panel on Discrimination could complete its investigation.

On 5 June 1990, the Chief of the Russian Translation Section wrote to the Panel on Discrimination, noting that their obligation to act expeditiously was inconsistent with a request for extension. He recalled his previous comments to the effect that his request for the termination of the Applicant's contract was "predicated only on his consistently inadequate performance as a United Nations translator." He also recalled that "the Government concurrence in [the Applicant's] case is only through 14 June 1990."

On 13 June 1990, the Chief of Personnel Services, UNOG, responded to the Panel on Discrimination's request of 1 June 1990, inter alia, as follows:

> "Please be informed that, in the absence of his Government's concurrence for an extension of the period of secondment, the Office of Human Resources Management is unable to extend [the Applicant's] appointment beyond 14 June 1990."

On 13 June 1990, the Panel on Discrimination informed the Assistant Secretary-General for OHRM that, as its request for an extension of the Applicant's appointment had been rejected, it could not proceed with the examination of the case.

Also, on 13 June 1990, the Chief of Personnel Service, UNOG, wrote to the Applicant that, "in the absence of Government concurrence for an extension of the period of secondment, the Office of Human Resources Management is unable to extend your appointment beyond 14 June 1990."

On 14 June 1990, the Applicant separated from the Organization. On 29 June 1990, he requested political asylum from the Swiss Government, which was granted on 14 May 1991.

On 13 August 1990, the Applicant wrote to the Secretary-General and requested a review of the administrative decision not to extend his appointment. On 21 November 1990, he requested the Secretary-General to agree to the direct submission of his appeal to the Administrative Tribunal. On 16 January 1991, the Assistant Secretary-General for OHRM advised the Applicant of the Secretary-General's agreement thereto. On 22 May 1991, a UNOG Joint Working Group, set up following UNAT Judgement No. 482 to consider the case of staff members "on secondment" whose appointments were not renewed and who had filed timely appeals took up the Applicant's case. On 14 October 1991, the Applicant was notified of the results of the review undertaken on his case by UNOG's Joint Working Group and of the Group's conclusion that his appointment would not have been extended, even if he had not been on secondment.

On 10 January 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant's criticism of the practice of secondment and his criticism of the treatment of UN staff of USSR nationality by their Government led to the Respondent's decision not to extend his appointment.

2. The decision not to extend the Applicant's appointment beyond 14 June 1990 was based solely on the USSR Government's refusal to give its concurrence for an extension, and violates Article 100 of the Charter and the provisions of personnel directive PD/9/59, which provides that translators are to be recruited for a minimum period of two years.

3. Staff members who were called upon to assess the Applicant's performance discriminated against him, and any evaluation report of the Applicant's performance after November 1989 is invalid as he was not interviewed for and did not sign any such report.

Whereas the Respondent's principal contentions are:

1. The Joint Working Group was established to provide independent and objective consideration of staff members based solely on their performance and the interest of the Organization, irrespective of the views of their Governments.

2. The Applicant's case was given proper consideration by UNOG's Joint Working Group. The decision not to reappoint the Applicant was fair and objective and fully respected his rights under the Staff Regulations and Rules.

3. The Applicant had no entitlement, including any legally cognizable expectancy, as regards continued employment on expiry of his fixed-term contract.

The Tribunal, having deliberated from 12 October to 11 November 1994, now pronounces the following judgement:

I. The Applicant's claim arises from his employment with the UN from 15 January 1989 to 14 June 1990. The Applicant was employed as a Translator with UNOG, for one year, from 15 January 1989. In January 1990, the Chief of Personnel Administration sought approval from OHRM for a one year extension of the Applicant's appointment. This approval was given in early April 1990, "subject to Government concurrence". Although the Chief of Languages Service, in April 1990, reaffirmed her recommendation that the Applicant's contract be extended for one year, the Applicant was granted extensions of his contract for only five months, i.e. until 14 June 1990.

During this entire period, the Applicant was erroneously considered to be on secondment from the USSR. The basis on which he was employed by the Organization did not conform to the standards for a valid secondment, discussed by the Tribunal in Judgement No. 482, Qiu, Zhou and Yao (1990). All the evidence, including the letters addressed to the Applicant by a Personnel Officer on 1 June 1990 and by the Chief of Personnel Services on 13 June 1990, clearly establishes that the non-extension of the Applicant's contract past 14 June 1990, was due to the lack of consent by the authorities of the USSR.

A strong presumption can be made that protests by the Applicant, such as the one of February 1990, against certain alleged practices by the USSR authorities with respect to staff members considered by them to be on secondment, including interference in their work, was the basis for the lack of consent by the USSR Government to the extension of the Applicant's contract beyond 14 June 1990.

II. The Applicant was thus wrongly separated from the Organization on 14 June 1990. After the Tribunal rendered Judgement No. 482, the Applicant's situation was reviewed by the Administration under provisions promulgated by the Secretary-General for implementing that judgement. (Cf. Judgement No. 559, Vitkovski and Rylkov (1992)). Accordingly, the Applicant's case was subsequently submitted to a Joint Working Group at UNOG for

consideration of whether he should receive a further appointment. The report of the Joint Working Group dated 22 May 1991, states, in part:

> "...
>
> 2. During the meeting of the Working Group held on 22 May 1991, the Chief of the Russian Translation Section expressed his strong reservations about [the Applicant's] performance. He qualified him as the least capable junior translator and did not recommend any extension.
>
> 3. The Chief of the Languages Service added that she was convinced that [the Applicant's] performance left much to be desired and therefore she would not recommend him for any extension. In the light of [the Applicant's] performance the members of the Working Group share these views."

The Respondent argues, on the basis of this report, that even if the Applicant had not been on secondment, his appointment would not have been renewed.

III. Because of the significance of this contention by the Respondent, the Tribunal directed questions to the Administration and to the members of the Joint Working Group with regard to the 22 May 1991 report. The answers to these questions reveal that the comment in the report by the Chief of the Languages Service was based largely, if not entirely, on the reservations expressed by the Chief of the Russian Translation Section rather than on her own evaluation. Those reservations were not adequately supported by the evidence, particularly in view of the Applicant's 1989 performance evaluation report. Moreover, prior to the Applicant's separation, the Chief of the Languages Service had recommended a one year extension of his contract to allow completion of his normal training period and did not withdraw this recommendation even after being asked to reconsider it by the Chief of the Russian Translation Section. His view of the Applicant as the least capable junior translator is not substantiated by a comparison of his 1989 performance evaluation report with the performance evaluation reports of the other junior translators. The Tribunal also finds

that the responses to questions directed to other members of the Joint Working Group indicate that their consideration was inadequate because it, too, was governed by the views expressed by the Chief of the Russian Translation Section rather than being based on a careful independent evaluation of all the pertinent evidence, including the Applicant's satisfactory 1989 performance evaluation report. Finally, it appears that the Chief of the Russian Translation Section was the object of a complaint by the Applicant in May 1990 to the Assistant Secretary-General for Human Resources Management, and to the Panel on Discrimination with respect to the Chief's hostile and allegedly biased intervention the previous month concerning the proposed normal extension of the Applicant's contract. The Tribunal cannot but conclude from all the evidence that, in the circumstances, the dominant role of the Chief of the Russian Translation Section in the Joint Working Group was highly questionable and that his actions were retaliatory in nature.

IV. The Tribunal was informed by the Respondent of an offer made to the Applicant after he had left UN employment, in an attempt to settle his claim, including details of conditions attached to the offer and of the Applicant's response. As the offer and response have no bearing on the Applicant's case before the Tribunal, information relating thereto should not have been disclosed. The Tribunal will therefore disregard it. The Tribunal trusts that in the future, no party will see fit to submit the content of unsuccessful settlement efforts, as this would be improper and might also discourage settlement discussions.

V. In view of the above, the Tribunal finds that the Applicant's separation, based on the belief that he was on secondment, was improper. He was plainly entitled, without any need for approval by the USSR authorities, to the extension of his appointment until 14 January 1991, as had been approved by OHRM and by the Chief of the Languages Service, on the basis of his satisfactory performance.

In addition, his right to be evaluated solely on objective grounds for an extension of his contract was violated by the injection of extraneous considerations.

VI. The Tribunal therefore finds that the Applicant is entitled to compensation and orders the Respondent to pay to the Applicant an indemnity equivalent to 19 months of his net base salary at the time of his separation from service.

(Signatures)

Jerome ACKERMAN
Vice-President, presiding

Hubert THIERRY
Member

Francis SPAIN
Member

New York, 11 November 1994

R. Maria VICIEN-MILBURN
Executive Secretary